

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANGEL PERRY,

Plaintiff,

v.

DECISION AND ORDER

18-CV-6443L

JOHN A. GUERRIERI, DDS PLLC,
doing business as John A. Guerrieri, DDS,

Defendant.

On August 27, 2020, this Court entered a Decision and Order (Dkt. #52) resolving several motions pending before the Court. The Court vacated its prior Order of May 14, 2020 (Dkt. #40), accepted the Report and Recommendation (Dkt. #39) of United States Magistrate Judge Mark W. Pedersen, but declined to impose the recommended sanction striking the Answer. In lieu of that remedy, the Court directed defense counsel to reimburse plaintiff's counsel for certain attorney's fees. Familiarity with that Decision is presumed.

In the Court's Decision of August 27, 2020, I directed plaintiff's counsel to submit an affidavit "setting forth reasonable attorney's fees incurred with respect to defendant's motion (Dkt. #42) for leave to file objections to the Report and Recommendation." Plaintiff's counsel filed such a Declaration with an Exhibit A setting forth billing notations on the case (Dkt. #54). Defense counsel submitted a Reply Declaration (Dkt. #56) objecting to some of the requested fees and plaintiff's counsel filed a Reply (Dkt. #57). Since the parties are in disagreement as to what

constitutes reasonable attorney's fees in connection with the Court's August 27, 2020 Decision, the matter is now before this Court for resolution.

Plaintiff's attorney has submitted a Declaration which seeks \$13,147 as a sanction. This request is in addition to sanctions previously imposed by Judge Pedersen in the sum of \$3,640.50, which has now been paid. Defense counsel opposes the request and asserts that many of the requested items relate to matters unrelated to defendant's motion for leave to file objections to the Magistrate Judge's Report and Recommendation (Dkt. #42). This Court's Decision of August 27, 2020 was quite specific and cabined plaintiff's attorney's fee application to fees incurred relative to defendant's motion (Dkt. #42) for leave to file objections to the Report and Recommendation. It did not envision that all fees incurred would be the subject of reimbursement.

The Court does note that plaintiff's counsel did exercise appropriate billing judgment in several respects. Specifically, plaintiff did not seek certain fees because the work related to other matters, often relating to plaintiff's motion for a default judgment. I acknowledge that billing judgment, but I do believe many of the fees requested exceed the scope of this Court's August 27, 2020 Decision.

Plaintiff's invoice on Exhibit A covering work from May 26, 2020 to June 11, 2020 (four entries) does not appear to be challenged by defense counsel. That sum of \$4,020 is appropriate and covered by this Court's August 27, 2020 Decision.

Defense counsel challenges any other award of fees, but I believe an award of additional fees is appropriate and covered by this Court's sanction Order. Specifically, I believe time spent by counsel preparing for and attending a status conference with the Court on June 24, 2020, as apportioned, as well as time spent preparing for and attending oral argument before the Court on July

27, 2020 should be compensated. Plaintiff's counsel has apportioned those fee requests to reflect the fact that a portion of both the status conference and the motion argument related to plaintiff's motion for default judgment and not strictly defendant's motion for leave to file objections to the Report and Recommendation. Those sums equal \$2,457. That sum, when added to the agreed-upon fees of \$4,020, results in an award of \$6,477. It is that sum that this Court believes constitutes reasonable attorney's fees incurred by plaintiff with respect to defendant's motion for leave to file objections to the Report and Recommendation.

CONCLUSION

As a sanction imposed by this Court by Decision on August 27, 2020 in connection with the Report and Recommendation of United States Magistrate Judge Mark W. Pedersen, defendant's counsel is to promptly pay the sum of \$6,477 to counsel for plaintiff, but in no case later than thirty (30) days from entry of this Decision and Order.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 14, 2020.